

122 W. WASHINGTON AVENUE, MADISON, WI 53703
PHONE: 608-257-2622 • FAX: 608-257-8386

JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Assembly Committee on Education

FROM: Sheri Krause, Legislative Services Coordinator

DATE: September 25, 2007

RE: Assembly Bill 484, relating to removal of a pupil from class, from any portion of school property, or from a school-sponsored activity.

The Wisconsin Association of School Boards (WASB) opposes Assembly Bill (AB) 484 because it would interfere with the well-established policies currently used in schools to promote safe learning environments.

AB 484 would allow any school employee to remove a student from school property or from a school-sponsored activity if the student is dangerous, unruly or disruptive or if the student interferes with the ability of a school employee to perform his or her job effectively; and require school districts to replace their codes of classroom conduct with codes of conduct.

Removal of a Student

The WASB is opposed to statutorily allowing all school employees the authority to remove students from school property or school-sponsored activities. School districts are legally responsible for their students. They already have the authority to allow any school employee to remove a student from a particular situation and send the student to the school principal or address the situation in another manner to ensure a safe learning environment. Policies and procedures are in place and are working in school buildings throughout the state. AB 484 would preempt those policies and create legal conflicts.

Under current law, teachers or other licensed staff, including special education aides, have the authority to remove a student from a classroom. They are required to send the student to the school principal or his or her designee and notify the principal of the reasons for the removal. The principal then determines if the student will return to the classroom or be placed in another instructional setting. The principal may also discipline the student.

AB 484 would allow all school employees the authority to "remove" a student. If the disruption occurred in a classroom, an employee would still be required to send the student to the principal. However, if the disruption occurred outside a classroom, an employee would have the authority under state law to "remove" the student from school property or from the activity and to determine whether or not to send the student to the school principal.

OFFICES

MADISON
122 W. Washington Avenue
Madison, WI 53703
Phone: 608-257-2622
Fax: 608-257-8386

WINNECONNE
132 W. Main Street
PO Box 160
Winneconne, WI 54986
Phone: 920-582-4443
Fax: 920-582-9951

BOARD OF DIRECTORS

GABE KOLESARI
President
Region 15
Hamilton School Board
N66W24468 Champeny Road
Sussex, WI 53089

TIM SIVERTSON
1st Vice President
Region 4
Elk Mound School Board
N3208 County Road H
Elk Mound, WI 54739

VICTORIA MCCORMICK
2nd Vice President
Region 11
Greendale School Board
5774 Finch Lane
Greendale, WI 53129

SID BJORKMAN
Immediate Past President
Region 1
Amery School Board
612 Cross Avenue
Amery, WI 54001

DAN BRERETON
Region 2
Florence School Board
PO Box 254
Florence, WI 54121

ROSE BOWEN
Region 3
Oconto School Board
215 Lindsey Avenue
Oconto, WI 54153

WALTER WETZEL
Region 5
Neillsville School Board
W5147 Granton Road
Neillsville, WI 54456

NEIL DURESKY
Region 6
La Crosse School Board
2921 Concord Place
La Crosse, WI 54601

MARY JANSSEN
Region 7
Little Chute School Board
420 E. Park Avenue
Little Chute, WI 54140

MELODY GEHRT
Region 8
Brillion School Board
1038 Holland Road
Kaukauna, WI 54130

JERRY JONES
Region 9
Seneca School Board
56562 Oak Grove Ridge Road
Eastman, WI 54626

ALICE MARQUARDT
Region 10
Rio School Board
W4265 Sampson Road
Rio, WI 53960

MARY ELLEN HAVEL- LANG
Region 12
Sun Prairie School Board
710 Hanley Drive
Sun Prairie, WI 53590

PATRICK SHERMAN
Region 13
Genoa City J2 School Board
PO Box 724
Genoa City, WI 53128

JOE DANNECKER
Region 14
Milwaukee School Board
2824 S. Wentworth Avenue
Milwaukee, WI 53207

WISCONSIN ASSOCIATION OF SCHOOL BOARDS, INC.

122 W. Washington Avenue, Madison WI 53703

Phone: 608-257-2622 or 877-705-4422 • Fax: 608-257-8386 • Web Site: <http://www.wasb.org>

The WASB has serious concerns about the ability of school boards to put reasonable policies into place if all school employees must be allowed by state law to remove a student and allowed to determine whether the student is sent to the principal:

- Would school boards have the authority to define “removal” differently for different circumstances – classrooms, hallways, playgrounds, field trips, etc?
- Would school boards have the authority to require the employee to send a student to the principal if feasible?
- Would school boards have the authority to limit an employee to removing a student from the setting in which the disruption occurred? For instance, if a student misbehaves during lunch, can a food service aide be limited to removing the student from the lunchroom or must the aide be allowed to remove the student from school property entirely?
- If an employee removes a student from school property during the school day, is it considered a suspension with due process rights?
- If all school employees have the right to remove students, do all school employees have the right to be informed of which students have behavior intervention plans in place as required under special education laws and will they be trained to implement those plans and maintain confidentiality?

Rather than create legal conflicts and inflexible policies that do not reflect the needs of local schools, the WASB requests that the Legislature continue to allow local policies to dictate how and when a student can be removed.

Classroom Codes of Conduct vs. Codes of Conduct

Under the language of AB 484, school districts would be required to replace their current codes of classroom conduct with more general “codes of conduct.” A single “code of conduct” would have far greater legal implications and ought to be vetted thoroughly as a separate public policy proposal.

All school districts have a specific code of classroom conduct as well as many other student conduct codes, rules and policies, which are regularly reviewed and updated. Unlike the other policies, however, the code of classroom conduct is statutorily required to be developed in consultation with a committee of parents, students, school board members, school administrators, teachers, pupil services professionals and other district residents appointed by the school board.

The WASB has serious concerns about the amount of time, effort and resources it will take for all 426 school boards to convene district committees and compile comprehensive “codes of conduct” and the legal implications of a mandated, single “code of conduct” in schools.

The WASB requests that the Legislature not require school boards to replace codes of classroom conduct with codes of conduct without a thorough review of the implications.

For these reasons, the WASB respectfully requests that AB 484 not be advanced. Thank you.

1. The first part of the paper is devoted to the study of the properties of the function $f(x)$ defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt$$

It is shown that the function $f(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

2. In the second part of the paper, we consider the function $g(x)$ defined by the equation

$$g(x) = \int_0^x \frac{1}{1+t^4} dt$$

It is shown that the function $g(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

3. In the third part of the paper, we consider the function $h(x)$ defined by the equation

$$h(x) = \int_0^x \frac{1}{1+t^6} dt$$

It is shown that the function $h(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

4. In the fourth part of the paper, we consider the function $k(x)$ defined by the equation

$$k(x) = \int_0^x \frac{1}{1+t^8} dt$$

It is shown that the function $k(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

5. In the fifth part of the paper, we consider the function $l(x)$ defined by the equation

$$l(x) = \int_0^x \frac{1}{1+t^{10}} dt$$

It is shown that the function $l(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

6. In the sixth part of the paper, we consider the function $m(x)$ defined by the equation

$$m(x) = \int_0^x \frac{1}{1+t^{12}} dt$$

It is shown that the function $m(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

7. In the seventh part of the paper, we consider the function $n(x)$ defined by the equation

$$n(x) = \int_0^x \frac{1}{1+t^{14}} dt$$

It is shown that the function $n(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

8. In the eighth part of the paper, we consider the function $o(x)$ defined by the equation

$$o(x) = \int_0^x \frac{1}{1+t^{16}} dt$$

It is shown that the function $o(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

WISCONSIN EDUCATION ASSOCIATION COUNCIL

Affiliated with the National Education Association

*Every kid
deserves a
Great School!*

Testimony to the Assembly Committee on Education
In Support of AB 484, Relating to the Removal of a Pupil from Class, from
any Portion of School Property, or from a School-Sponsored Activity
September 25, 2007

Thank you, Representative Davis, and members of the committee for allowing me to speak in favor of a bill that is dear to my heart and important to many, many educational support professionals and school employees throughout the state.

My name is Sue Smits. I live and work in DePere. My responsibilities include work as a recess supervisor in Heritage Elementary School, and I work in food service at DePere High School. I've worked in these positions for eight years. Before that I worked as a custodian for 13 years.

A great school is one in which students are safe, orderly and healthy. AB 484 includes Education Support Professionals and other school employees in the school discipline law so that they have the authority to keep schools safe for kids and staff. Current law gives a teacher the authority to remove a pupil from the classroom if the pupil violates a locally-developed code of conduct; is dangerous, unruly or disruptive; or exhibits behavior that interferes with the teacher's ability to teach effectively. AB 484 gives Education Support Professionals that same authority. The bill also expands that authority to include not only the classroom but also any portion of school property or from a school-sponsored activity supervised by the school district employee.

I support this bill very simply because students should show common courtesy and respect for all adults in the school community. I and other support staff should be afforded the same rights as the teaching staff.

As Marge Rivard, a para-educator from the Appleton school district pointed out in her testimony on a similar bill in 2004:

"Those rights include the authority for a para-educator to remove from the classroom a disruptive student who is interfering with the learning of other students. Those rights include the authority for a food service employee to remove a disruptive student from the cafeteria so that others may enjoy their meal, for a bus driver to remove a student from a bus so he/she can transport students safely, or for a custodian to remove a disruptive student from a hallway so that other students may feel safe."

Stan Johnson, President
Dan Burkhalter, Executive Director

Would you want your child to be afraid because adults in the school lack the authority to deal with problem students?

AB 484 is a common sense bill. The more adults with authority in a school, the safer the school will be. Because of budget cuts, more and more support staff members are assigned to supervise students in and outside the classroom. AB 484 allows school employees to remove a student who has violated the school's code of conduct, whether on the playground, in the lunchroom, in the school hallway, or in the classroom. AB 484 allows school employees to deal with disruptive situations immediately without having to seek out a teacher or administrator to enforce the school's code of conduct. Usually that means the support staff member refers the disruptive student to the principal's office followed by a written report of the incident documenting the school's code of conduct violation.

My experience has been that many times the removal of a student is a good thing for some kids. The student may benefit from some one-on-one attention from an adult to help the student deal with his or her problem. Not addressing a small student problem may become a larger problem—even a tragedy—if not dealt with by a caring adult.

Empowering educational support professionals sends a message to students that teachers, administrators and support staff are working as a team to keep schools orderly places of learning. Support staff need to be assured that they will be supported by school administration when they intervene to discipline students and enforce school rules. When support staff decisions are not supported, they may be reluctant to intervene in a school situation in which a student is dangerous or disruptive, worried that their authority may be questioned by administration. I am fortunate to have an excellent principal who trusts my decision-making. In the past, however, I was not so lucky. I had a principal who questioned everything I brought to him for discipline. Some of the staff would sometimes look the other way fearing they wouldn't be backed by the administration.

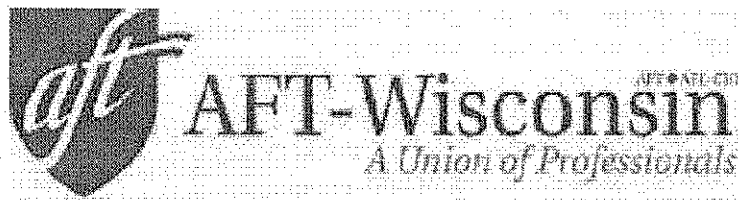
Support staff should be able to enforce the local code of conduct without being told, "You're not a teacher--I don't have to listen to you." You won't be surprised to hear that I have experienced different levels of discipline for a student who is disruptive or violent with a support staff member and one that becomes disruptive or violent with an administrator.

Cheryl Gruse, a paraprofessional from the Oshkosh School District, submitted testimony in 2005 that included this:

"I do my job because I love children and want to help make a difference in their education. Some of our students come from disadvantaged homes. Some students come to school from homes in which they have not been taught common courtesy and respect for authority. I know in our job that we take verbal abuse, almost on a daily basis, but keeping an abusive student within the classroom puts all of us at risk." (This bill) "would give paraprofessionals the authority to enforce the rules and maintain order."

Educational Support Professionals and as well as all school employees play an integral role within the school community to keep the schools safe, orderly and healthy places that are conducive to learning. Many do a very tough job with not much pay. They deserve the respect, support and authority to make professional decisions that keep schools safe and orderly. AB 484 is a significant step forward to extend to educational support professionals the authority and respect they deserve. I urge you to support AB 484.

Sue Smits
3346 Monroe Road
DePere, WI 54115
920-336-9338



AFT-Wisconsin Position Paper: 484: Support

AFT-Wisconsin supports proposed bill AB 484, which would give school related personnel the ability to remove disruptive students from the classroom, school property or a school-sponsored activity sponsored by that school. This legislation recognizes the critical role that all school employees play in keeping our schools and our students safe. As more school related personnel are placed in supervisory roles, whether in the classroom, or during school related events, it is important that they are empowered to have the tools necessary to deal with disruptive students.

AFT-Wisconsin is a statewide organization that represents teachers and public school employees throughout the state of Wisconsin.

Reasons to Support AB 484:

- Under current law, “teachers are allowed to remove students from his or her class if the pupil violates the code of classroom conduct adopted by the school board; is dangerous, unruly, or disruptive; or exhibits behavior that interferes with the teacher’s ability to teach effectively, as specified by the code of classroom conduct.” Most of the time, removal means that a student is sent to the principal’s office. This bill would give teachers and support staff the ability to remove students not just from the classroom, but from the play-ground, the hallway, or from a school-related event.
- Across the state, we are seeing more school support staff taking on broader responsibilities including more roles with authority. This legislation simply gives these employees the same tools and resources that are currently used by teachers to deal with disruptive students. Support staff would only be allowed to remove the student when they are under their supervision.
- This is a common-sense proposal that empower coaches, classroom aides, and other school employees to take a hands-on role in keeping their school community safe. As our schools continue to address growing concerns over violence and disruptive behavior, they should strive to empower more professional employees to play a role in school safety. School employees should work as a team to enforce proper classroom and school conduct.
- Empowering our professional employees to play a role in removing disruptive students sends an important message to students and employees alike: School Related Personnel should be respected in the classroom and throughout our schools. These employees play a crucial role in helping our schools run safely and effectively.

In light of recent violence at schools across the country, it is important that all of our school employees have the tools necessary to handle disruptive students that are under their supervision. Support staff deserve the respect of their students and their coworkers. AFT-W urges you to support AB 484.

Please feel free to contact me with any and all concerns.

Scott Spector
Government Relations Representative
AFT-Wisconsin
608-662-1444 ex 229

2024



School Administrators Alliance

Representing the Interests of Wisconsin School Children

TO: Assembly Committee of Education
FROM: John D. Forester, SAA Director of Government Relations
DATE: September 25, 2007
RE: Assembly Bill 484 – Removal of a Pupil from Class, School Property, etc.

The School Administrators Alliance (SAA) strongly opposes Assembly Bill 484, relating to authorizing any school district employee to remove a pupil from class, school property or a school-sponsored activity. This proposal would diminish the ability of school districts to administer disciplinary policies uniformly and has the potential to increase districts' legal liability.

Under current law, teachers are generally allowed to remove a pupil from class if the pupil violates the code of classroom conduct; is dangerous, unruly, or disruptive; or exhibits behavior that interferes with the teacher's ability to teach effectively. AB 484 would extend this ability to any school district employee and also allows a school district employee to remove a pupil from school property or from a school-sponsored activity supervised by that employee.

If enacted, the bill would:

- Diminish school districts' local control in developing and administering disciplinary policies. The SAA believes that local school boards, administrators and teaching staff are best positioned to implement disciplinary procedures to meet the unique needs of their students and staff.
- Diminish school districts' ability to administer disciplinary policies uniformly. By granting this disciplinary authority to school district employees that have little knowledge or training in the law or best practice in this area, the bill has the potential to increase school districts' legal liability, to harm children and to create numerous misunderstandings between employees, students and parents.
- Have major implications for students with disabilities that are enrolled in special education programs. By granting all school district employees, irrespective of training, the authority to remove a student from school property or a school-related event, the bill sets up the potential for violation of the student's Individual Education Plan (IEP). This, of course, could then lead to legal action against the district.

Thank you for your consideration of our views. If you have questions regarding the SAA's opposition to AB 484, please contact me at 608-242-1370.

4797 Hayes Road, 2nd Floor • Madison, WI 53704 • (608) 242-1370 • Fax (608) 242-1290 • www.wsaa.org

An Alliance of:

Association of Wisconsin
School Administrators

Wisconsin Association of
School District Administrators

Wisconsin Association of
School Business Officials

Wisconsin Council for
Administrators of Special Services



The Wisconsin Council of Administrators of Special Services

September 25, 2007

Representative Brett Davis, Chair
Assembly Committee on Education
Room 308 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Representative Davis and Members of Committee on Education,

The Wisconsin Council of Administrators of Special Services (WCASS) is a professional special education leadership organization in Wisconsin. We are requesting that the members of the committee not support Assembly Bill 484. The proposed bill would expand current law from a teacher being able to remove a student from his or her class for violations of the code of classroom conduct to any school district employee being able to remove a student from school property or from a school-sponsored activity supervised by that employee.

The proposed bill has major implications for students with disabilities that are enrolled in special education programs. All students in special education programs must have an Individual Education Plan (IEP) and many of these plans have behavior intervention plans as part of the IEP. The behavior intervention plan provides a process and procedure for dealing with special education students that may be having behavior problems in school or on school property. To give all school employees the authority to remove a student from school property or a school-sponsored activity sets up the possibility of the special education students IEP being violated. This then could make the school liable for legal action for not following the students IEP.

We believe that only individuals with administrative authority (principal or director of special education) should be responsible for removing a special education or any student from school property or school activities. WCASS encourages the Assembly Committee on Education to not support AB 484. If you have any questions please feel free to contact me.

Sincerely,

Philip Knobel
Executive Director

Reasons for Opposing Assembly Bill 484
Susan H. Alexander, District Administrator
Markesan District Schools
September 25, 2007

No one would disagree that children learn best in a well managed school. All members of any school community are important to the process of securing a safe and nurturing environment for our children. But individual members of our community are entrusted with differing levels of responsibilities for disciplining our students. Superintendents make recommendations to the Board of Education with respect to the expulsion of a given student. The Board of Education then determines whether a student may be expelled and for the period of time attached to the expulsion.

Principals and their associates determine consequences that involve suspension and detentions. Teachers are permitted to remove a student from their class for a class period and may assign their own classroom detentions or other simple forms of discipline. Support staff members are part of the eyes and ears of the school community and are empowered to bring their observations to teachers or administrators. But they are not entrusted with the authority to discipline students and this is wise. School support staff members include custodians, cooks, aides and secretaries. These important and valuable members of our staff are hired to assist in the operations of the school, but they are not hired to carry out discipline that includes removing students from class, school property or school-sponsored activities.

Laddered levels of authority with respect to student discipline are reasonable because student behavior is complex. Discipline must be carried out with an even-hand. It must be appropriate and consistent. Families and students must understand the school's behavioral standard and respect the consistency in its implementation.

We understand the importance of laddered authority in other fields and we must trust its rightness in the learning environment as well. Let me share a recent experience I had with laddered authority in the medical field. In August, my 88-year old mother underwent surgery to fuse four vertebrae in her lower back. The surgeon was skilled and did his work well. On the day that she was transferred from the hospital to a rehabilitation center, she received no pain medication. The nurses and the nursing assistants at the rehabilitation center were aware of her pain and her need for medication. But her medications hadn't arrived from the "new pharmacy" that was associated with the rehab center. The nurses were unable to reach either the surgeon or the new rehab doctor. As I pleaded with them, they offered Tylenol. Now you and I both know that these nurses and nursing assistants have observed more patients in high levels of pain than the doctors who performed the surgery. But they are not given the authority to prescribe. We had to work through a medical doctor and we did.

Laddered authority works well most of the time. It did not work for my mother, but if assistants were given the authority to write prescriptions, the problems created by this could be serious. And so it is with school communities. There may be an individual

situation where it would have been convenient to permit a support staff member to discipline a child, but the consequences for granting this type of authority to support staff could be severe. Perhaps you are concerned that a custodian may not presently be empowered to break up a fight or to assist in the break up of a dangerous situation. All staff members have the authority to assist in dangerous situations. But the decision to remove a pupil from class, an activity or school property must remain with teachers and administrators.

Support staff are neither hired nor trained to discipline children. They may have had experience in disciplining their own children, but they are not experienced disciplining the children of others. This authority should not be placed with support staff just as nursing assistants are not and should not be permitted to prescribe pain medication. Please do not pass Assembly Bill 484. It is well intentioned but poor legislation.

**TESTIMONY OF SENATOR JOHN LEHMAN
ASSEMBLY COMMITTEE ON EDUCATION
SEPTEMBER 25, 2007 – PUBLIC HEARING
ASSEMBLY BILL 484**

Mr. Chairman and members of the Assembly Education Committee, thank you for the opportunity to address you today on Assembly Bill 484, which would expand the statutes regarding disciplining disruptive behavior in the classroom.

For students to succeed, first and foremost, our schools must be safe. Recent years' tragic stories of school violence in Wisconsin and across the nation have reminded us that we must actively ensure school safety, and address behavioral problems as they arise.

AB-484 is a common sense bill. Under current law, teachers have the authority to remove students from the classroom when faced with incidents of disruptive behavior. This bill expands the school discipline law to include education support professionals and other school employees. With this legislation in place, more adults in the school will be vested with disciplinary authority to enforce rules and meet safety needs. To students, this means a productive learning environment will be maintained. It sends a clear message that all school personnel are working together to keep schools running smoothly.

This bill would also allow teachers and support staff to remove disruptive students from other situations on school property or at school-sponsored events, for example a school assembly, recess, or in the hallways.

Clear criteria for removal would be laid out under statute. A student could be removed if he or she:

1. Violates the code of conduct adopted by the school board,
2. Exhibits behavior that is dangerous, unruly, or disruptive, or
3. Exhibits behavior that interferes with the ability of a teacher to teach effectively, as specified in the code of classroom conduct

Under the bill, the disruptive student would be escorted to the principal's office.

As a former teacher for over 20 years, I understand the importance of maintaining a harmonious learning environment at school. AB-484 gives school personnel another tool to keep kids safe and orderly.

I am pleased that this proposal has strong bipartisan support in both the Senate and the Assembly. Rep. Ballweg and I will be happy to address any questions you may have.



JOAN BALLWEG

WISCONSIN STATE REPRESENTATIVE

PO Box 8952, State Capitol
Madison, Wisconsin 53708-8952
(608) 266-8077
Toll-free: (888) 534-0041
Rep.Ballweg@legis.state.wi.us

41ST ASSEMBLY DISTRICT

**AB 484: Student Discipline Bill
Testimony by State Representative Joan Ballweg
Before the Assembly Committee on Education
September 25, 2007**

Thank you Chairman Davis and committee members for holding this hearing on AB 484, which would modify the statutes related to disciplining a student in the classroom. Current law is restricted to the teacher and for disruptive behavior that occurs in the classroom.

When I was approached to work on this bill, I had no reservations taking up an issue related to the educational environment for students. My first job after graduating from U.W. Stevens Point, with a degree in elementary education, was as a school teacher. As a teacher, parent, and now a legislator, I think it is critical that we ensure our kids' safety and provide a learning environment that is free of negative disruptions.

AB 484 would amend the statute to allow educational support professionals and other school district employees to discipline disruptive behavior. Many of these individuals work in the classroom with the teacher on a daily basis, have responsibility for supervision of the children, and

should have the authority and tools to keep kids safe. This bill would also expand the boundaries, so that it applies outside the classroom. The learning environment includes school sponsored activities that are not held on school grounds. At the same time, AB 484 would apply to conduct that is observed in the school hallways, in the lunchroom or on the playground at recess.

The type of behavior that would warrant removal from the classroom or a school sponsored activity must be clearly specified in the school's code of conduct (this is behavior that either interferes with the other students' ability to learn or infringes on the school district employee's ability to perform his or her job effectively.) When a student is removed, that student is then sent to the principal's office or whoever the principal has designated for disciplinary matters. In addition, there are requirements for the school district employee to provide a written explanation of the situation to the principal within 24-hours.

I am joined by Sen. Lehman, who is the senate co-author of this bill.

If you have any questions, we would be happy to answer them.

1. The first part of the paper is devoted to the study of the properties of the function $f(x)$ defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt$$

It is shown that the function $f(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

2. In the second part of the paper, we consider the function $g(x)$ defined by the equation

$$g(x) = \int_0^x \frac{1}{1+t^2} dt + \int_0^x \frac{1}{1+t^4} dt$$

It is shown that the function $g(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

3. In the third part of the paper, we consider the function $h(x)$ defined by the equation

$$h(x) = \int_0^x \frac{1}{1+t^2} dt + \int_0^x \frac{1}{1+t^4} dt + \int_0^x \frac{1}{1+t^6} dt$$

It is shown that the function $h(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

4. In the fourth part of the paper, we consider the function $k(x)$ defined by the equation

$$k(x) = \int_0^x \frac{1}{1+t^2} dt + \int_0^x \frac{1}{1+t^4} dt + \int_0^x \frac{1}{1+t^6} dt + \int_0^x \frac{1}{1+t^8} dt$$

It is shown that the function $k(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

5. In the fifth part of the paper, we consider the function $l(x)$ defined by the equation

$$l(x) = \int_0^x \frac{1}{1+t^2} dt + \int_0^x \frac{1}{1+t^4} dt + \int_0^x \frac{1}{1+t^6} dt + \int_0^x \frac{1}{1+t^8} dt + \int_0^x \frac{1}{1+t^{10}} dt$$

It is shown that the function $l(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

6. In the sixth part of the paper, we consider the function $m(x)$ defined by the equation

$$m(x) = \int_0^x \frac{1}{1+t^2} dt + \int_0^x \frac{1}{1+t^4} dt + \int_0^x \frac{1}{1+t^6} dt + \int_0^x \frac{1}{1+t^8} dt + \int_0^x \frac{1}{1+t^{10}} dt + \int_0^x \frac{1}{1+t^{12}} dt$$

It is shown that the function $m(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

7. In the seventh part of the paper, we consider the function $n(x)$ defined by the equation

$$n(x) = \int_0^x \frac{1}{1+t^2} dt + \int_0^x \frac{1}{1+t^4} dt + \int_0^x \frac{1}{1+t^6} dt + \int_0^x \frac{1}{1+t^8} dt + \int_0^x \frac{1}{1+t^{10}} dt + \int_0^x \frac{1}{1+t^{12}} dt + \int_0^x \frac{1}{1+t^{14}} dt$$

It is shown that the function $n(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

TESTIMONY IN OPPOSITION TO AB 484

by

Jeffrey Spitzer-Resnick

Managing Attorney

September 25, 2007

As many of you may know, Disability Rights Wisconsin (DRW) is Wisconsin's protection and advocacy agency for people with disabilities. In my capacity as the Managing Attorney for DRW's Schools and Civil Rights Team, I focus much of my attention on special education. Since students who receive special education virtually all attend the same schools that are affected by general education laws, I am pleased to have the opportunity to present testimony in opposition to AB 484.

At first glance, AB 484 may appear to be simply a common sense piece of legislation designed to make it easier for school employees to remove unruly children from any portion of school property or a school sponsored activity. However, in actuality, it is a dangerous bill which would allow school employees such as janitors, the principal's secretary or anyone else who works at the school, to decide, without review, to remove any child that they wanted to remove from an activity.

The bill contains no definition of "dangerous, unruly or disruptive," so apparently any school employee can make that determination for him or herself. Moreover, the bill contains no limit to how often, or for how long the student may be removed. Thus, if this bill passes, the school janitor could remove as many students as he or she likes for as often as he or she pleases, and for an indefinite duration.

There is also no provision for either the student or the student's parents to dispute the removal. Thus, if a school employee simply does not like a particular student, there is absolutely nothing the student or parent can do to stop the employee from continually removing the student from school activities.

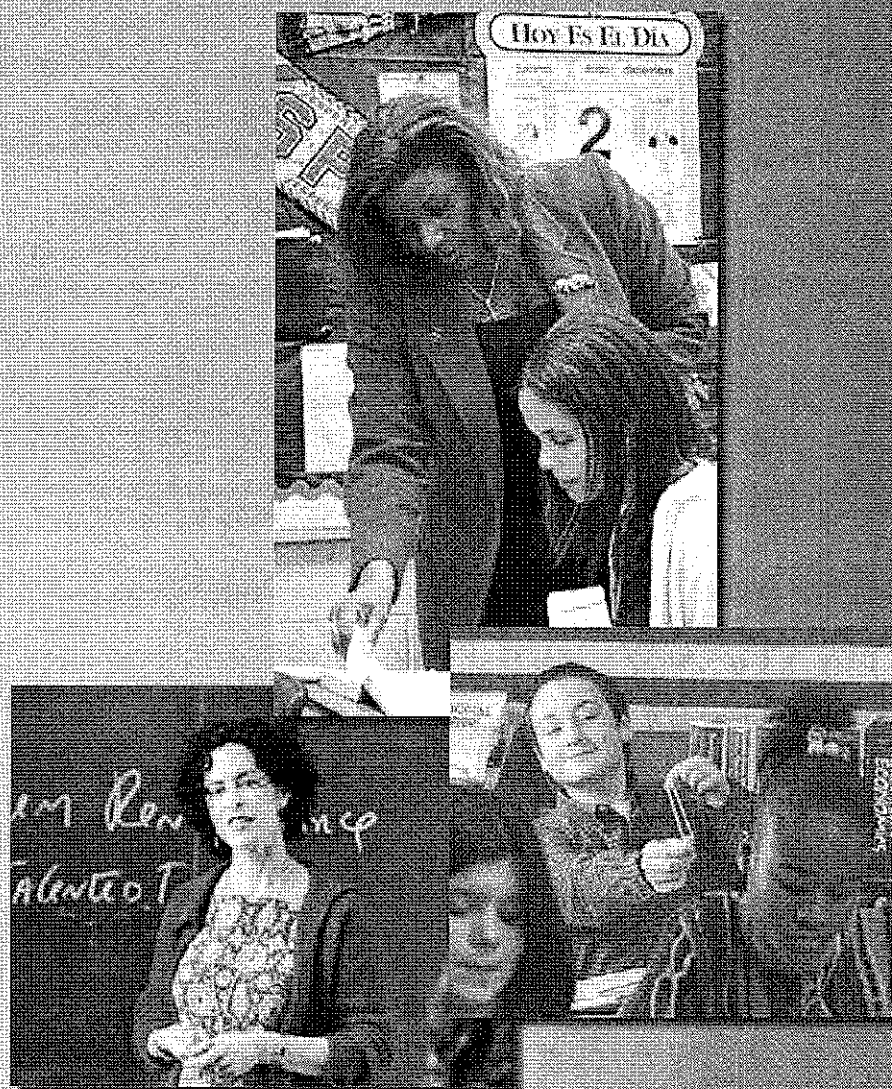
The bill also states that the child should be brought to the principal's office if he or she is removed. While that may make sense if the student is at school, it makes absolutely no sense if the removal occurs during a field trip or other school sponsored activity. The bill simply does not address the impracticalities of removing a student from a school sponsored activity which is not at the school building.

In addition, while the bill is subject to 20 USC 1415(k) which deals with certain issues pertaining

to children who receive special education, it does not address the potential for violating the special education student's Individualized Education Program (IEP).

Most important, is that regardless of whether or not the student does receive special education, this bill gives license to all school employees to disrupt as many students' educations, as often as they like, and due to the lack of definitions in the bill, for virtually any reason. Imagine the nightmare for both school administrators as this bill provides no recourse for a student, a parent, or even school administrators, to stop such unfettered removals.

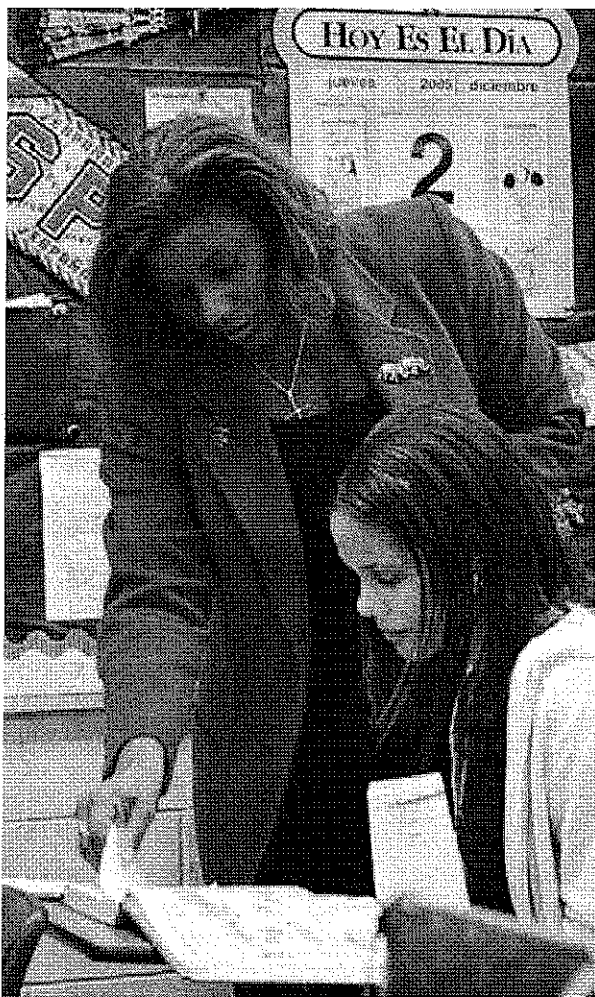
This committee should kill this bill quickly. Thank you for your attention to this matter. I would be glad to answer any questions which you may have.



ADDRESSING ISSUES
PRESENTED BY VIOLENT SPECIAL
EDUCATION STUDENTS

A JOURNAL • 2007

When it enacted the IDEA, Congress created a federal right for children with disabilities to receive a public education that is designed for each child individually at no cost to their parents. Because the law is a funding statute, school districts must comply with it in order to receive federal education dollars.



IDEA entitles each child with disabilities in a school district the right to a "free appropriate public education" (FAPE), through an individual education program (IEP) designed to meet the child's unique needs in the "least restrictive environment...appropriate." In addition, parents of children with disabilities have the right to take legal action against school districts to ensure that their children receive FAPE.

Because of the IDEA, increasing numbers of students with violent behaviors are appearing in regular and special education classrooms in public schools.

Imagine the following news item appearing in the local association newsletter to members:

Your School, Wisconsin—Jason, a ten year old child with several disabilities, was well behaved while visiting a nursing home with his class last Friday, so the paraeducator assigned to work with him told him that he would get a treat. However, on the bus back to school he kicked another student and swore. As a result, he was told that he would not get a treat after all.

Jason became more and more agitated. When the bus reached the school, Jason began to scream obscenities while kicking and hitting the staff members. He gave his teacher a black eye and bruised the ribs of the bus driver. The police were called. The one staff member who had been trained to use passive restraint techniques eventually restrained Jason. When the police arrived, Jason attacked the police officer. Jason was handcuffed and placed in the squad car.

This is the fifth incident this year where Jason became so violent that he injured others. When asked whether Jason will be returned to the classroom or placed in an alternate educational setting, the District stated that it could not remove Jason to an alternate placement without the parents' consent.

This fictional report is an amalgamation of actual reports received from educators and support staff across the state. Though such incidents are relatively rare, they are extremely traumatic for all involved.

Each year, serious injuries are inflicted on school staff by special education students whose violent behavior is often substantially related to or caused by their disability. In the past several years, WEAC members have suffered injuries including broken teeth, scratched corneas, dislocated jaws, disabling spinal injuries, bites, scratches, and bruises, among others. Among the primary reasons that teachers and paras are repeatedly injured by the same student is misunderstanding on the part of the school district about whether students with disabilities can be removed for safety reasons.

NOTE: This information is not intended to serve as legal advice. If you have questions about a specific situation, call your UniServ director.

The following issues are those that arise when staff must work with special education students whose violent behavior is uncontrolled:

- *whether the student can be removed from the regular or special education classroom,*
- *whether the district can suspend or expel the student,*
- *whether the member can call the police or press charges against a student,*
- *whether the member will be liable for injury inflicted on other children by the special education student,*
- *what recourse the member has if injured by a student, and*
- *whether a staff member who was injured can be required to continue working with the student.*

Even if a staff person's injuries do not require medical attention, where the aggressive behavior is repeated throughout the day, every day, the constant anxiety associated with the fear of being hurt causes teachers and other staff to suffer psychological injury and burnout. Some of these "invisible" injuries are depression, insomnia, anxiety attacks, and post-traumatic stress syndrome.

Despite clear evidence of the severity and frequency of injuries, however, some school districts are unwilling to remove the special education student to an alternate placement to keep staff and other students safe, especially if the parents insist that the child remain in the classroom. As a result, employees in some districts face the likelihood of serious injury each day they work with or near a violent child with disabilities.

In addition, some teachers and paraeducators are told that the student cannot be subject to consequences of any kind for behavior that injures others. School staff have even been told that students with disabilities cannot legally be removed from the classroom, despite the severity and frequency of the behavior. Such statements leave staff and students at the mercy of violent outbursts by students with disabilities whose behavior is allowed to continue unchecked. This does a disservice to the violent student as much as to those he/she may injure by failing to teach the child that in the world outside the classroom, real consequences will be forthcoming, and, without learning to stop the behavior, he/she is likely to end up in the criminal justice system.

Hence, the problem of violent behavior caused by students' disabilities continues to bedevil teachers who are trained in academic, not therapeutic, techniques. Because school personnel are not trained to work with children whose violent behavior stems from a disability and where the possibility of injury is discounted or ignored altogether by the District, they daily face a situation they are ill-suited to handle without suffering injury, both physical and psychological.

I. Can Special Education Students Be Removed From the Classroom for Engaging in Violent Behavior? YES.

A. Federal Law Permits Removal of Students if Certain Procedures Are Followed.

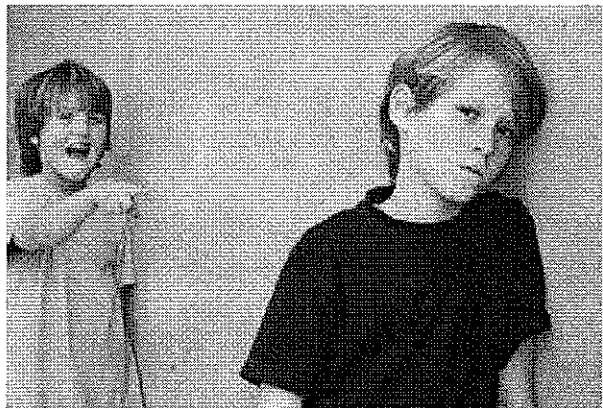
IDEA as amended in 1997 and in 2004 permits school personnel to remove dangerous students from the classroom for up to 10 days per school year before additional procedures must be used if parents object to a longer removal.

However, a school district can remove a special education student from the current placement for up to 45 days without parental consent in three situations: a) where the student has a weapon, or b) for illegal drug use or possession, or c) if the student inflicts "serious bodily harm" on someone at school or at a school function. Note that "serious bodily harm" is defined as being a life-threatening or permanently disabling injury, such as the loss of a limb or sensory function, such as sight, smell, touch, or hearing.

Whether short term removals to another location within the school count toward the ten day limit depends on factors such as the frequency of the short-term removals and whether the student continued to receive services required by the IEP while removed from the primary placement. If services are provided and IEP goals continue to be addressed, districts can unilaterally implement various short term removals which may not equal a change in placement, though cumulatively they add up to more than ten school days.

However, once the ten day limit has been reached, the law provides additional procedural safeguards to children with disabilities, including those whose disabilities cause them to be violent and dangerous.

For example, if a student's parents object to removal of the student from the classroom, the school district can and should seek an expedited hearing where it can



present evidence to a hearing officer who is empowered to order the removal of the student to an "interim alternate educational setting." Safety removals can be ordered for up to 45 days, during which students must continue to receive educational and other IEP services.

To obtain such an order, the district must show that it provided sufficient supplementary aids and services for the student to succeed in the original placement and that it has adequately addressed the student's behavioral issues. To do so, the IEP team must have conducted a functional behavior assessment and implemented a behavior improvement plan without success prior to the removal.

Following removal, the district must convene the IEP team to determine the appropriate placement for the student.

The IDEA requires school districts to provide a "continuum of placements" from the least restrictive environment (the regular education classroom) to increasingly restrictive environments, including hospitalization and home care, in order to meet the student's unique needs. Violent and dangerous students often need a more restrictive environment than can be provided in the regular or special education classroom.

IDEA gives special education students the right to have any removal for more than 10 days in a school year reviewed by the procedures set forth in the law. Where parents object, the law does not preclude such removals per se, but does require the school district to support its decision with evidence that it has provided sufficient help to the student for the placement to have succeeded but for the student's violent behavior.

B. Wisconsin Law Also Permits Removal of Violent Special Education Students.

The Wisconsin legislature acknowledged the need to keep educators and others safe from violent students when it passed § 120.13, Stats. This statute sets forth the bases upon which school officials can remove students: for violating school rules, for making a bomb threat, and for endangering or threatening to endanger the property, health, or safety of others.

Under § 120.13, school boards are empowered to allow school personnel to remove students for five days for one of the reasons stated above, and for 15 days if a notice of expulsion is sent to the parents. Note, however, that in the case of special education students, the length of the removal will be subject to the IDEA's 10-day limit for unilateral removals, after which a hearing officer's order must be sought if parents object to continued removal.

Under § 118.164, "Removal of Pupils from Class," teachers can remove students who "violate the code of classroom conduct," and who are "dangerous, unruly, or disruptive, or exhibit behavior that interferes with the ability of the teacher to teach effectively, as specified in

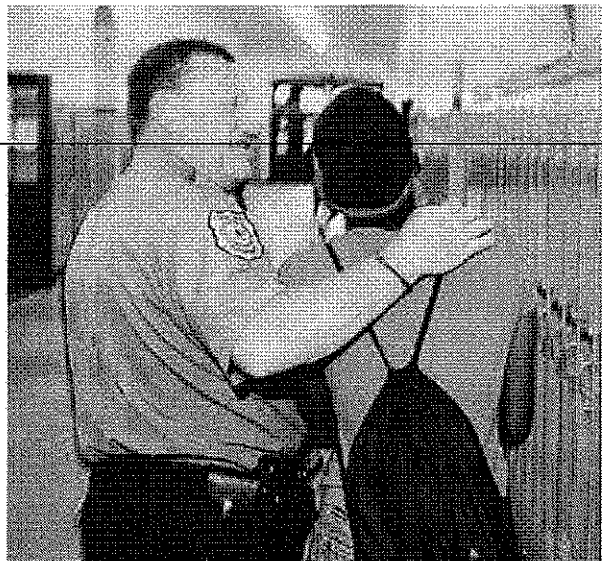
the code of classroom conduct." Again, the length of removal of special education students is subject to the 10-day-per-school-year-removal limit in the IDEA.

In addition, where teachers might need to intervene to protect their own or others' safety, § 118.31, Stats., allows teachers to use "reasonable and necessary force" in the following situations:

- (a) to quell a disturbance or prevent an act that threatens physical injury to any person . . .
- (b) . . . to obtain possession of a weapon or other dangerous object within a pupil's control . . .
- (c) . . . for the purpose of self defense or the defense of others . . .
- (d) . . . for the protection of property . . .
- (e) . . . to remove a disruptive pupil from a school premises or motor vehicle . . . or from school sponsored activities . . .
- (f) . . . to prevent a pupil from inflicting harm on himself or herself. . . .
- (g) . . . to protect the safety of others.

§ 118.31 also requires each school district to adopt a policy that "allows any official, employee or agent of the school board" to use reasonable and necessary force for the purposes enumerated above, and provides that "deference shall be given to reasonable, good faith judgments made by an official, employee or agent of a school board."

Thus, state law recognizes the need for teachers and school officials to be able to protect themselves and others from injury and threats of injury, whether inflicted by a regular or special education student. While state law must be applied subject to the IDEA's restrictions on removal of special education students, IEP teams should consider what behavior will result in removal. If the parents agree to a behavior management approach that permits unlimited removal to prevent injury to others, then the district is not bound by the IDEA's 10 day limit.



Teachers serving on IEP teams should ensure that the IEPs of students whose disability results in violent behavior contain provisions for dealing with the potential for violence, including the school conduct code and disciplinary measures that permit removal from the classroom to protect others' safety.

II. Special Education Students May be Suspended and/or Expelled From School If Provided Enhanced Procedural Review of the Decision.

In determining whether a student with a disability is eligible for enhanced due process prior to suspension or expulsion, the IEP team must make a "manifestation determination" in which it decides whether the student's behavior was caused by or is substantially related to the disability.

If the IEP team concludes that the behavior is unrelated to the disability, then the student can be disciplined like any other student, and is accorded no enhanced due process protection.

Even if the behavior is not related to the disability, the IDEA requires that students with disabilities must continue to receive the educational services required by their IEPs during the removal.

But if the IEP team concludes that the offense that would result in expulsion for a regular education student was caused by the student's disability, the school district must seek an expedited hearing and present evidence to convince a hearing officer that expulsion (essentially a change in placement to a location outside the school) is warranted.

III. A Staff Member Can Call Police or Press Charges if Attacked by a Special Education Student.

If any student, whether in special or regular education, attacks any staff member, the staff member may report the attack to police and can seek to press charges against the student, whether or not the attack resulted in physical injury. Staff may also call police if they witness an attack by a student.

Similarly, if any student threatens a staff member or someone else, the staff member may call the police to report the threat. Remember that the threat must be one that the student could carry out. For example, if a first grader threatens to kill his teacher with a knife, it is unlikely that such a threat could be acted upon. While such an unrealistic threat should never be ignored, common sense suggests that calling the police would not be appropriate. On the other hand, a high school student who sends an email threatening the life of a teacher with specific details

about how he could carry out the threat should never be ignored or minimized, and the police should be called.

Staff do not need the district's permission to report an attack or threat to police or to press charges against a student. However, it is up to the local prosecutor to determine whether charges will be filed against the student in court. If you work in a district where your administrator appropriately addresses violent student issues, the need to involve the police may not arise.

Even so, by reporting such incidents to police, a record of the student's behavior is created that can be presented in a hearing or other adjudication should the student be suspended or expelled.

IV. Barring Gross Negligence of the Staff Member, the Member Will Generally Not be Held Liable for Injury Inflicted on Other Children by a Special Education Student.

Staff members will almost certainly not incur liability for injury inflicted on others by a special education student unless the staff member is guilty of extreme negligence.

The following hypothetical may be illustrative:

A special education teacher is assigned to work with a child whose history includes violent behavior such as hitting, kicking, and biting. At the IEP team meeting, this behavior is discussed and interventions and preventive strategies are identified, including the provision of a one-on-one aide for the child. The teacher and aide have great success in reducing the violent behavior until one day when, before either staff member could intervene, the child suddenly dashed three feet away and bit another child in the face, inflicting an injury that required stitches and plastic surgery.

The parents of the injured child subsequently sued the school district and named the aide and teacher individually, claiming that they were negligent and are liable for their child's injuries.

Under state law, school employees who are acting within the scope of their employment are generally immune from suit as individuals. Employees may be liable in cases where their behavior was so negligent as to remove it from being within the scope of their employment.

In the hypothetical, the teacher and aide would almost certainly be immune from suit. They were present in the classroom, were carrying out their duties in the normal way, each was attending to assigned tasks, the IEP was followed, and the parents would not be able to prove that there was anything either could have done to prevent the tragic injury. (For similar reasons, the district also would likely prevail in a motion to dismiss the lawsuit.)

However, a staff member could be held individually liable for gross negligence resulting in injury inflicted by a special education student on another student. The following hypothetical will illustrate:

A staff member knew that the violent student in his/her class could not be trusted to remain unsupervised with other students without acting out violently. Nonetheless, on a day when the student's one-on-one aide was absent, the teacher went to the office to pick up his mail, leaving the student alone in the classroom with other students. The violent student broke another student's arm while the teacher was gone.

This injury arguably resulted from the staff member's gross negligence in knowingly leaving the violent student unsupervised without good reason in the presence of others vulnerable to harm.

V. Members Who Are Injured on the Job Are Generally Barred by Worker's Compensation From Filing Suit Against the School District to Recover Damages for Their Injuries.

In almost all instances where a staff member is injured by a student, the member's only recourse will be to claim state worker's compensation benefits.

In one rare instance, a staff member injured by a student who had been taken off medication that reduced violent behavior received workers compensation benefits, and also successfully sued the home insurance carrier of the parents of the student for negligence for failing to warn the school district that the student had been taken off his medication. (See *Nieuwendorp v. American Family Insurance*, 191 Wis. 2d 462 (1995).) But under state worker's compensation law, the worker's compensation insurer was eligible to claim a portion of the award for benefits it had paid the employee.



Because members can exert pressure on school districts through their local union, their best recourse is preventive. Bargaining over issues pertaining to staff safety is one way members have to prevent injury from occurring and provide enhanced benefits if injuries do occur.

In a case where the facts show that a district knowingly put an employee in a situation which it knew would result in injury to him/her, the employee may be able sustain a legal action against the employer. However, such a case is extremely difficult to win, even where the facts are clear.

VI. Because Staff Members Injured by a Student May Be Required to Work With the Student Following the Incident, It Is Important to Involve the Local Union and/or UniServ Director to Ensure That Staff Remain Safe From Injury.

Staff members who are injured by a student understandably wish to be removed from working with that student. However, the assignment of staff is one of the "management rights" about which districts are not required to bargain. Thus, whether a staff member's request will be honored depends on several factors.

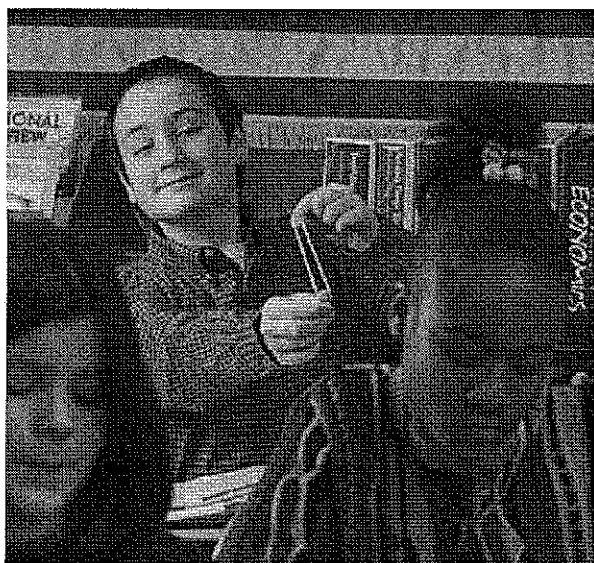
Districts may consider the extent of physical and mental trauma suffered by the staff member as a result of the injurious behavior. Regardless of the extent of injury, however, most districts will try to honor the request of an injured staff member to have the injuring student removed from the class.

Another factor districts may consider is whether another staff member is available to provide services to the student. A smaller district might not remove the student, even where the behavior was significantly injurious, arguing that it has nowhere else to place the student. However, members should not acquiesce to such a stance.

Instead, the district should seek permission from the parents to change the placement to an alternate setting while it determines what it can do to deliver services to the child. If the parents object, the district can seek an expedited hearing to have the student placed in an alternate educational setting so that the staff member is not forced to choose between his/her job and his/her safety.

In addition, the local union can be instrumental in support of the injured colleague by putting pressure on the district to resolve the issue without placing the injured staff member in harm's way. Such organized activity is often most effective in convincing a district to remove a student from an injured member's caseload or to otherwise ensure that further injury does not occur.

In those rare cases where a district refuses to protect a teacher from further injury by a violent student, a



restraining order may be necessary to protect the safety of the teacher. If a teacher believes that he/she is subject to certain harm by a student, the teacher should contact his/her local union and UniServ director. The UniServ director will then determine whether to refer the case to WEAC's Office of General Counsel for legal action.

VII. What to Do When Faced With Aggressive Behavior

When faced with a student whose behavior is violent, including kicking, biting, scratching, chasing, pushing, head-butting, hitting, choking, grabbing, etc., it is important to have a plan in place to protect all involved. The following suggestions will help to address the problem, and perhaps either help the child stop the behavior, or place the child where the behavior can be appropriately treated and resolved.

- The first time aggression is shown, notify the administration and your local representatives and UniServ Director. You are entitled to support from your union in resolving the problem, and in ensuring your right to a safe working environment is respected.
- Keep out of the range of the student. Your safety is more important than the IEP goals when the student is being violent.
- Have in place a plan to remove the other children from harm's way, and to keep yourself out of the violent student's reach. Notify the administration of the plan, and ensure that the plan provides a safe way to have the student removed by an administrator.
- Document the behavior each time it happens.
- Ask to reconvene the IEP team to conduct a Functional Behavior Assessment, if one hasn't been completed, and to discuss the behavior management plan, what additional supports may work, and the

appropriateness of the placement if they do not work.

- Ask for additional support and services for the student.
- Ask for training in how to help the student manage the behavior.
- Seek the parents' cooperation in finding a solution to the problem, even if it includes removal from the classroom.
- If necessary, call the police to have the student removed and/or to report assaults.
- Remind the district of its obligation to ensure the safety of staff and students, and of its obligation to provide a continuum of placements under IDEA.
- Explain to the district the importance of seeking an expedited hearing, if necessary, to have a student removed for inflicting injuries on others.

Injuries, both physical and psychological, to staff and students by special education students must not be tolerated. The degree to which public schools provide a safe teaching and learning environment depends on a number of factors, including 1) whether administrators, staff, parents and communities remain in a state of denial about violent behavior and the injuries inflicted on others by special education students because of their disabilities; 2) the degree to which school administrators and staff work together to find solutions rather than tolerate violent special education students' behaviors; 3) the education of the community about the existence of special education students' violent behaviors and the resulting injuries to staff and students; 4) the determination of the community to provide the programs, resources, and personnel with sufficient appropriate expertise to teach students to stop violent behaviors; and 5) the willingness and ability of school districts to make available the continuum of placements for special education students required under the IDEA.

Additional Resources

National Education Association. www.nea.org

American Federation of Teachers. www.aft.org

National Association of School Psychologists www.nasponline.org

Center for Positive Behavioral Intervention And Support www.air-dc.org/cecp/cecp.html

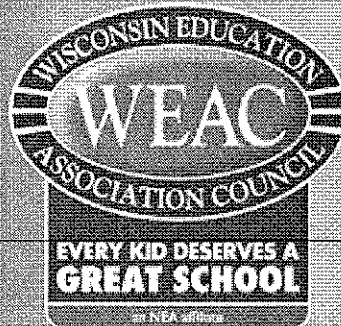
National Dissemination Center for Children With Disabilities. www.nichcy.org

The Council for Exceptional Children. . . www.cec.org

WEAC www.weac.org

Charlene S. Gearing, Ph.D.
Director, Teaching & Learning
Wisconsin Education Association Council
33 Nob Hill Road
Madison, WI 53713
Phone: 1 (800) 362-8034 ext. 215
Email: GearingC@weac.org

Joanne Huston
Legal Counsel, Teaching & Learning Consultant
Wisconsin Education Association Council
33 Nob Hill Road
Madison, WI 53713
Phone: 1 (800) 362-8034 ext. 226
Email: HustonJ@weac.org



33 Nob Hill Road
PO Box 8003
Madison, WI 53708-8003
608.276.7711
800.362.8034

weac.org

